



G A O

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Computers Universal, Inc.

File: B-293548

Date: April 9, 2004

Peter Cannon for the protester.

Maj. Kateni T. Leakehe and Capt. Richard M. Sudder, Department of the Army, for the agency.

Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency obtained services outside scope of broad indefinite-delivery, indefinite-quantity contract through delivery order is denied where contract under which delivery order was issued contains broad statement of objectives that reasonably encompasses services at issue.

DECISION

Computers Universal, Inc. (CUI), a small business, protests the decision of the Department of the Army to obtain non-destructive inspection (NDI) and non-destructive testing (NDT) services in support of Eighth United States Army aviation units in Korea through a pre-existing delivery order issued to DynCorp under contract No. F34601-97-D-0422, which was awarded by the Department of the Air Force.¹ CUI objects that obtaining NDI/NDT services under the delivery order improperly increases the scope of the Air Force contract.

We deny the protest.

¹ As used here, NDI/NDT services employ various techniques to determine the integrity, composition, physical, electrical, or thermal properties, or dimensions of a structure or component without causing a change in any of these characteristics. The methods include liquid penetrant, magnetic particle, electromagnetic, ultrasonic, and penetrating radiation. Agency Report, Tab 18, Army Technical Manual TM 1-1500-204-23-7 (July 31, 1992), at 2-3.

On October 14, 2003, at the request of the Army, the Air Force issued delivery order No. 0422-0122 under the DynCorp Contract Field Team (CFT) contract.² The delivery order specified a delivery order “ceiling amount” of \$3,995,000. Agency Report, Tab 15, Order for Supplies or Services DD-1155, at 1. In January 2004, the Army decided not to exercise an option under CUI’s contract and thus allowed CUI’s contract for NDI/NDT services to expire. At the same time, the Army began to obtain NDI/NDT services under delivery order No. 0422-0122. This protest followed.

The Air Force CFT contract with DynCorp was one of four multiple award, indefinite-delivery, indefinite-quantity (IDIQ) CFT contracts awarded on July 31, 1997 under request for proposals (RFP) No. F34601-97-R-0008. Air Force Contracting Officer’s Statement at 1. The CFT contract provided for a 2-year base term, followed by four successive 2-year option periods, with a maximum term of 10 years.³ RFP § I-195. The Air Force emphasizes that the CFT contract is a flexible worldwide contracting vehicle.⁴ The protester does not hold a CFT contract.

The Federal Acquisition Streamlining Act (FASA), as codified at 10 U.S.C. § 2304c(d) (2000), generally precludes protests in connection with the issuance or proposed issuance of a task order. However, protests on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued are authorized under FASA. See Floro & Assocs., B-285451.3, B-285451.4, Oct. 25, 2000, 2000 CPD ¶ 172 at 6. The protester argues that inclusion of the NDI/NDT services under delivery order No. 0422-0122 is improper because this work is outside the scope of the CFT contract.

The CFT contract did not include a statement of work as such. Rather, a two-page statement of objectives was appended to the RFP, which set forth one program objective, nine contract objectives, and one management objective, all of which were quite general. The single program objective was stated as follows:

The objective of this program is for the offeror to provide supplemental on-site Organizational, Intermediate, and Depot level maintenance support for modification, maintenance, and repair of various DoD [Department of Defense] weapons systems and associated support equipment for any Federal Agency at locations both in CONUS

² A contract field team is essentially a team of skilled technicians. Army Dismissal Request at 2.

³ The contract also specifies that “[o]rders issued prior to the expiration date of the contract will be carried to completion provided . . . performance does not normally exceed 120 days beyond the period of the contract.” RFP § F-12.

⁴ While initially issued for a “ceiling” total award amount of \$210 million, through a series of modifications, the ceiling now approaches a billion dollars. Agency Report, Tab 6, CFT Contract Modification No. P00025, at 2.

[continental United States] and OCONUS [outside of continental United States] at an affordable cost.

RFP Statement of Objectives for Contract Field Teams at 1. In addition, the contract objectives consisted of broad goals, such as “utiliz[ing] a program management system . . .” and “plan[ning] and execut[ing] a safety program.” *Id.* at 1-2. Further, the individual contract line items were described as relating to labor or services that were:

necessary to perform modification, maintenance, or repair on various DOD weapon systems and support equipment at world-wide locations as contemplated in AFMCR 66-33 & AFMC FAR Supplement 5392.5 and in accordance with individual delivery orders issued.

RFP § B. DynCorp included a labor category for an “inspector” in its CFT contract.

The record shows that NDI/NDT services are utilized by the Army “to perform modification, maintenance, or repair on various DOD weapon systems and support equipment,” and consequently these services are the type that potential offerors reasonably could have anticipated would be covered by the CFT contract.⁵ Agency Report at 4. The protester does not meaningfully argue otherwise.⁶ We, therefore,

⁵ Although this protest does not directly present the issue of the breadth of the CFT contract, we nevertheless reiterate our concern about whether the use of such broad long-term IDIQ contracts undermines the efficiencies that full and open competition would produce. *E.g., Federal Procurement: Spending and Workforce Trends*, GAO-03-443 (Washington, D.C.: Apr. 2003) at 14. We have also recognized that the use of IDIQ contracts with very broad and often vague statements of work may place an unreasonable burden upon potential offerors, especially small businesses, which may be required to guess as to whether particular work, for which they are interested in competing, will be acquired under a particular IDIQ contract. *See Valenzuela Eng’g, Inc.*, B-277979, Dec. 9, 1997, 98-1 CPD ¶ 51 (Letter to the Acting Sec’y of the Army, Jan. 26, 1998, at 2); *cf. Phoenix Scientific Corp.*, B-286817, Feb. 22, 2001, 2001 CPD ¶ 24 at 13 (IDIQ contract to provide unplanned maintenance services for all Air Force-managed weapons systems was not too broad where Air Force placed concrete reviewable limits on availability of contract).

⁶ CUI presented a memorandum from an Army official who, just 2 years earlier, had become dissatisfied with DynCorp’s performance of these same services and had indicated that the CFT contract was not an adequate vehicle to ensure proper performance of the services. That memorandum eventually led to CUI responding to a solicitation to provide NDI/NDT services. The Army has now reverted to utilizing the CFT contract. We do not find that these earlier views about the scope of the CFT contract preclude the Army from reasonably deciding that the CFT contract is suitable today.

conclude that NDI/NDT services reasonably fall within the scope of the CFT contract.

The protester also argues that the requirements and procedures for performing NDI/NDT services are not adequately defined and will result in inferior or dangerous performance in delivery order No. 0422-0122. CUI also claims that the decision to obtain NDI/NDT services from DynCorp was made because of a bias in favor of DynCorp. However, we are precluded by statute from considering these grounds of protest in connection with the issuance of the delivery order to DynCorp, and we thus dismiss these protest grounds. 10 U.S.C. § 2304c(d) (2000).⁷

The protest is denied.

Anthony H. Gamboa
General Counsel

⁷ We note, however, that with regard to the alleged inadequacy of the specifications contained in the delivery order, our Office generally will not consider the merits of an allegation that a more restrictive specification is necessary to serve the government's interest. Assurance that sufficiently rigorous specifications are used in a solicitation is ordinarily a primary concern to procurement personnel and user activities, since it is they who must suffer any difficulties resulting from inadequate specifications, not for resolution under our bid protest function. Miltope Corp.--Recon., B-188342, June 9, 1977, 77-1 CPD ¶ 417 at 2; aff'd, Miltope Corp.--Recon. (Second), B-188342, July 1, 1977, 77-2 CPD ¶ 3 at 1. We also note that CUI's claim that the decision to obtain NDI/NDT services from DynCorp was made because of a bias in favor of DynCorp is fundamentally based on speculation and inference, leaving the protest essentially unsupported factually. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6.